

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF)	
POTLATCH TELEPHONE COMPANY,)	CASE NO. GNR-T-02-16
CENTURYTEL OF IDAHO, CENTURYTEL)	
OF THE GEM STATE, AND THE IDAHO)	NOTICE OF PETITION FOR
TELEPHONE ASSOCIATION FOR A)	DECLARATORY ORDER
DECLARATORY ORDER PROHIBITING)	
THE USE OF "VIRTUAL" NXX CALLING.)	NOTICE OF MODIFIED
)	PROCEDURE
)	
)	NOTICE OF INTERVENTION
)	DEADLINE
)	
)	ORDER NO. 29125
)	

On August 27, 2002, several small incumbent local exchange companies (LECs) filed a petition seeking a declaratory order. In particular, the Petitioners urged the Commission to declare that the practice of "virtual" calling by means of a virtual prefixes (NXX) or other virtual-like services is not in the public interest and should be prohibited in Idaho. Virtual NXX calling converts what would otherwise be a long-distance toll or message telecommunications service (MTS) call to a toll-free local call by the assignment of a telephone prefix (NXX-____) that makes it appear that the call is a local call. The Petition for Declaratory Order was filed jointly by Potlatch Telephone, CenturyTel of Idaho, CenturyTel of the Gem State and the Idaho Telephone Association (ITA).¹

NOTICE OF THE PETITION

In its simplest terms, the Petitioners urge the Commission to prohibit the assignment of telephone prefixes (NXX) to telephone customers with no physical presence in an exchange assigned to a particular NXX prefix (i.e., virtual NXX). The Petitioners want to prohibit intrastate telephone calls between locations that are not within the same local calling area being "rated as local rather than toll" calls. Petition at 6. If a call that would otherwise be a long-

¹ The ITA has 14 members including Albion Telephone, Cambridge Telephone, Midvale Telephone, Direct Communications Rockland, Silver Star Telephone, Rural Telephone, and Inland Telephone. These listed companies receive financial support from the Idaho USF. Petition at 4.

distance call is rated as a local call, then the caller avoids paying toll charges and, in turn, the originating and terminating LECs do not receive access charges.

In the alternative, the Petitioners seek an order from the Commission declaring that the use of virtual NXXs or like services are MTS or toll services and are subject to the assessment and payment of originating and terminating access charges. The Petitioners also seek an order from the Commission declaring that the use of virtual NXX prefixes: (1) are an inappropriate use of numbering services; (2) violate number portability standards; and (3) violate the contribution standards for state Universal Service Funds (USF), Telecommunications Relay Services (TRS), and high cost fund requirements. Petition at 2.

According to the Petition, there are several ways in which virtual NXX calling may occur. First, a telephone customer may be assigned an NXX code that is associated with another local exchange or local calling area. For example, if a customer in Albion were assigned a Boise NXX prefix, then that call might be rated as a local call because the Albion caller is calling from a telephone number that contains a prefix assigned to the Boise exchange (or the Treasure Valley calling area). In this case, the caller would avoid paying toll charges and the originating and terminating LECs would not receive their appropriate access charges. Another example of virtual NXX calling would be the assignment of a NXX prefix that covers multiple local rate centers or calling areas. For example, the 844 prefix that until recently was employed for LATA-wide calling to Qwest's time-of-day service, might subsequently be used to avoid paying toll charges and access charges for calls with the LATA.

The Petitioners assert that the use of virtual NXX prefixes to avoid toll charges has occurred in other states where competitive LECs have requested virtual NXX codes. Petition at 5. In addition, the Petitioners "believe that at least one or more CLECs that provide VNXX or VNXX-like services in other states are now certified in Idaho." *Id.* at 6.

The Petitioners assert that the primary analysis used by the FCC and this Commission to determine whether a call is local or long-distance is to determine the point of origination and the point of termination or an "end-to-end analysis." *Id.* at 7. The Petitioners assert that *Idaho Code* § 62-603(1) defines "basic local exchange service" as "two-way interactive switched voice communication within a local exchange calling area." (Emphasis added). *Idaho Code* § 62-603(7) defines "local exchange calling area" as a "geographic area encompassing one (1) or more local communities as described in maps, tariffs, rate schedules, price lists, or other

descriptive material filed with the commission by a telephone corporation, within which area basic local exchange rates rather than message telecommunication service rates apply." (Emphasis added). The Petitioners allege that the use of virtual NXX prefixes would be discriminatory because some customers could use NXX prefixes to avoid toll charges while other customers not assigned or using virtual NXX prefixes could not avoid toll charges.

The Petitioners also note that on at least one prior occasion, this Commission has found that services or network configurations, with which callers avoid toll charges, are unlawful and not in the public interest. In what is commonly referred to as the *Upper Valley Case*, the Commission found that a "bridging service" that enabled toll-free calling between Nampa and Boise (at a time when such a call was a toll call)² was inappropriate. At the time, calls between: 1) Nampa and Meridian; and 2) between Meridian and Boise, were extended area service (i.e., local) calls. Using the EAS bridge in Meridian, callers from Nampa could call Boise without incurring toll charges. In Order No. 25933, the Commission found that

Upper Valley's EAS bridging services are either MTS or the functionally equivalent of MTS. We further find that Upper Valley's use of the EAS route is unfair because Upper Valley is using a LEC's EAS plant and facilities without justly compensating the LEC for such use. Transporting what would otherwise be an MTS call over EAS routes also unfairly disadvantages all other interexchange carriers. Upper Valley is not purchasing the appropriate wholesale service for resale to its customers. Failure to compensate U S West for its originating and terminating access charges and use of its EAS trunks is inappropriate; it is discriminatory to other long-distance companies that purchase and impute the correct access charges; and it is not in the public interest.

Order No. 25993 at 2, quoting Order No. 25885 at 14. (Emphasis added).

The Petitioners also observed that a number of other State commissions are examining virtual NXX calling. These states include New York, Ohio, South Carolina, Maine, Georgia, Tennessee, and Missouri.

In addition to denying LECs access charges and interexchange companies toll charges, the Petitioners claim that use of virtual NXX services would adversely affect the Idaho USF, the TRS, and the high cost universal service fund. They claim that virtual NXX calling converts what would otherwise be toll or MTS traffic to local traffic. Consequently, the total

² In April 1997, the Treasure Valley local calling area was created. Creation of the extended area local calling area meant a Nampa to Boise call that used to be a toll call was now a local call.

number of MTS reported minutes is reduced. Because the USF and TRS are funded in part by a surcharge on MTS minutes, any reduction in MTS minutes directly reduces the level of funding for these programs. When the high cost universal service fund is implemented (*Idaho Code* § 62-610F), the Petitioners claim that a similar adverse effect might occur. Petition at 13.

Based on the foregoing, the Petitioners urge the Commission to issue an Order declaring that the use of virtual NXX prefixes or NXX-like services are prohibited in Idaho and authorize "immediate termination and disconnection of [such] services by any Idaho LEC." *Id.* at 13-14. They also propose that the Commission's Order contain findings that such MTS calls are subject to toll charges, access charges, and all other applicable laws and regulations. Finally, Petitioners request that the Order declare that such virtual service arrangements are inappropriate and find that a single NXX assigned to a multiple local rate center should be prohibited where it violates standards necessary to implement local number portability.

DEADLINE FOR INTERVENTION

YOU ARE HEREBY NOTIFIED that persons desiring to intervene in this matter for purposes of being designated as a party **must file a letter with the Commission Secretary on or before 14 days from the service date of this Order.** The letter should include an e-mail address and supply the necessary information required by Rule 41. IDAPA 31.01.01.041. Persons desiring to present their views without parties' rights of participation are not required to intervene and may submit their comments to the Commission and the Petitioners as outlined below.

YOU ARE FURTHER NOTIFIED that once the Commission has received the requests for party status, the Commission Secretary will issue a Notice of Parties. Parties filing comments in this matter will be required to serve those parties listed in the Commission's Notice of Parties. Comments submitted in this matter shall be served by overnight delivery, U.S. Mail, or electronic mail. Parties submitting comments may serve other parties via electronic mail. Parties using e-mail to serve other parties may do so by attaching their comments to an e-mail and forwarding to the party's representative(s).

NOTICE OF MODIFIED PROCEDURE

YOU ARE FURTHER NOTIFIED that the Commission has determined that the public interest may not require a formal hearing in this matter and will proceed under Modified Procedure pursuant to Rules 201 through 204 of the Idaho Public Utilities Commission's Rules

of Procedure, IDAPA 31.01.01.201 through .204. Rule 102 provides that the Commission shall issue a Notice to all affected utilities. The Commission also recognizes that the “local” service areas for certain telecommunication providers (cellular, PCS, paging) do not necessarily conform to the boundaries of local exchanges or local calling areas for wireline services. Consequently, their NXX codes may encompass large geographic areas.

YOU ARE FURTHER NOTIFIED that any person desiring to state a position on this Application may file a written comment in support or opposition with the Commission **within 28 days from the date of this Order**. The comment must contain a statement of reasons supporting the comment. Persons desiring a hearing must specifically request a hearing in their written comments. Written comments concerning this Application shall be mailed to the Commission and transmitted to the Petitioners at the addresses reflected below:

Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074

Street Address for Express Mail:

472 W. Washington Street
Boise, ID 83702-5983

Morgan W. Richards
Moffatt, Thomas, Bartlett, Rock & Fields
101 S. Capitol Boulevard, 10th Floor
PO Box 829
Boise, ID 83701
E-Mail: mwr@moffatt.com

Gail Long
Manager, External Relations
PO Box 1566
Oregon City, OR 97045-1566
E-Mail: gail.long@tdstelecom.com

Ted Hankins
Director, State Government Relations
PO Box 4065
Monroe, LA 71211-4065
E-Mail: ted.hankins@centurytel.com

Clay Sturgis
Senior Manager
MOSS ADAMS, LLP
601 Riverside, Suite 1800
Spokane, WA 99201-0663
E-Mail: clays@mossadams.com

These comments should contain the case caption and case number shown on the first page of this document. Members of the public desiring to submit comments via e-mail may do so by accessing the Commission’s home page located at www.puc.state.id.us under the “File Room” icon. Once at the “File Room” page, select “File a Comment,” fill in the case number as it

appears on the front of this document, and enter your comments. These comments must also be sent to the Petitioners at the e-mail addresses listed above.

YOU ARE FURTHER NOTIFIED that if no written comments or protests are received within the time limit set, the Commission will consider this matter on its merits and enter its Order without a formal hearing. If written comments are received within the time limit set, the Commission will consider them and, in its discretion, may set the same for formal hearing.

YOU ARE FURTHER NOTIFIED that the Petition has been filed with the Commission and is available for public inspection during regular business hours at the Commission offices. The Petition may also be reviewed by accessing the Commission's homepage located at: www.puc.state.id.us under "File Room" listed on the left hand side of the homepage. Once in the "File Room," click on "Telecommunications Cases (electronically filed)" and scroll down to this docket.

YOU ARE FURTHER NOTIFIED that all proceedings in this case will be held pursuant to the Commission's jurisdiction under Titles 61 and 62 of the Idaho Code and that the Commission may enter any final Order consistent with its authority under Title 61 or Title 62, Chapter 6.

YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be conducted pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*


ORDER

IT IS HEREBY ORDERED that any person desiring to participate in this matter as a party must notify the Commission Secretary via letter within 14 days from the date of this Order. The Commission Secretary shall then issue a Notice of Parties. Parties filing comments in this case must serve the parties identified in the Commission's Notice of Parties.

IT IS FURTHER ORDERED that any person desiring to submit comments regarding this Petition for Declaratory Order may do so within 28 days from the date of this Order.

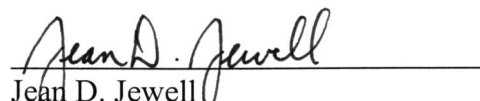
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 3rd
day of October 2002.


PAUL KJELLANDER, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


DENNIS S. HANSEN, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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